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SUBJECT: IBC MEETING ON HUMAN CLONING

REF: STATE 114207

¶1. The International Bioethics Committee (IBC) of UNESCO met October 28-29, 2008, followed, October 30-31, by a joint meeting of the IBC and the Intergovernmental Bioethics Committee (IGBC), to discuss what the IBC should recommend to the Director General on possible action by UNESCO with respect to human cloning and to discuss IBC reports on certain principles of the Universal Declaration on Bioethics and Human Rights (2005). The meeting evidenced an absence of consensus for further work toward a normative instrument on human cloning and disagreement on the draft report on Social Responsibility. Final action on these items will be taken by the IBC at its next meeting, in Mexico in May, ¶2009. The IGBC will meet next in Paris in July. End Summary.

¶2. The IBC mandate is to encourage the exchange of ideas, and to heighten awareness. Carter Snead, Professor at Notre Dame Law School, is a newly appointed member. The IGBC is composed of 36 Member States, including the U.S. Member States that are not members of the IGBC and NGOs attended the IBC and IGBC meetings as observers.

¶3. The DG had asked the IBC, an independent advisory committee composed of 36 experts, to consider whether there had been changes since the Declaration on Human Cloning adopted by the UN General Assembly (2005) that warranted further action on this issue by UNESCO. A working group of the IBC prepared a report that recommended development of a binding instrument banning reproductive cloning and development of guidelines for regulation of "research" cloning in countries that permit it.

¶4. At the Direction of the Department (Reftel) Ambassador Oliver met with the Director General on October 27 to discuss the involvement of UNESCO in the cloning issue. The Ambassador conveyed the U.S.' strong objection to any action by UNESCO with respect to human cloning. She pointed out that continuing to pursue this matter would be divisive and would adversely affect the DG's leadership in his last year in the post. She hoped that, regardless of the nature of the recommendation of the IBC, the DG would not recommend that UNESCO pursue efforts to develop an instrument banning reproductive cloning.

¶5. There was no consensus among the IBC experts at the October 2008 meeting to adopt the report of the working group or to recommend that UNESCO proceed to develop an instrument banning reproductive cloning. They noted there is confusion about the science (in particular, the implications of induced pluripotent stem cell technology (IPS)) and the terms used. The chairman of the working group heard a "healthy skepticism" concerning the working group's report. The chairman of the overall IBC said that the working group needed more time to reflect.

¶6. The interventions of Member States at the joint meeting with the IGBC that followed on the heels of the IBC meeting reinforced the absence of a consensus for

further work toward an instrument.

¶7. The United States made a statement opposing further work by UNESCO to develop an instrument. It pointed to the 2005 UNGA Declaration, which urged Member States "to prohibit all forms of cloning in as much as they are incompatible with human dignity and the protection of human life." The U.S. said there has been no new development to warrant reopening the UNGA Declaration; the Declaration was based on beliefs about human life that are universal and fundamental and have not changed over the last three years; the U.S., like many others, believes that any human cloning is unethical and an assault on human dignity, and transforms humans into commodities, devaluing human life and the relationship of human beings to each other. An effort to ban reproductive human cloning, while being silent on "research" cloning, would suggest something less than total condemnation of all cloning and thus be inconsistent with the UNGA declaration. There can be no exception for "research" cloning, which would require the destruction of all cloned embryos; to attempt to justify it on the basis of potential benefits would take the ethically untenable position that human life can be created and destroyed for the convenience of others. And any effort to regulate "research" cloning would similarly be unacceptable since it would facilitate what the UNGA has already said should be banned.

¶8. The interventions of a number of other Member States implied opposition to UNESCO work on an instrument, either by not supporting UNESCO action or by making a variety of essentially negative points. They said there was no consensus for action; any action would take a long time; the effort might be counterproductive if it failed and led to negative inferences; it is too early to decide if a convention would be possible; and/or UNESCO should move slowly and cautiously in this area. With varying degrees of clarity, countries taking one or more of these approaches included: Switzerland, Jamaica, Germany, France, U.K., Saudi Arabia, Denmark, and the Netherlands. Madagascar preferred a ban on reproductive cloning and a moratorium on research cloning but explicitly said that nevertheless it supported the U.S. and France and Germany (which it understood to be negative). Canada also explicitly supported the U.S., saying this is not the time to develop a convention. The World Health Organization said that efforts to agree on a convention would take too long and would "undermine the credibility" of UNESCO and WHO. On the other side of the coin, Japan, Indonesia, and South Korea supported the working group report and wanted a convention banning reproductive cloning with regulation of "research" cloning; the Dominican Republic, Egypt, and Kenya supported such action by UNESCO because they said they need UNESCO's guidance. The interventions of Russia, Libya, and India were so muddled as to verge on being incomprehensible, but they did not express clear support for an instrument.

¶9. Further comments on the working group's report can be filed in writing. The IBC plans to adopt its final recommendation to the DG at its next meeting.

¶10. The meetings also considered IBC reports on certain principles of the Bioethics Declaration.

¶11. One of these principles is the importance of obtaining a patient's consent for a medical intervention (Articles 6 and 7). The IBC reported at the meeting on how it had responded to suggestions made by the members of the IGBC at its meeting in July 19-20, 2007. The report on consent is now published in final form.

¶12. The meeting also discussed a draft of a report on "Social Responsibility," a term included in the title of Article 14 of the Bioethics Declaration ("Social responsibility and health"). The draft weaves together different strands of the Declaration to create new

"rights": it says, for example, that Article 14 is normative, not descriptive, and, as combined with Article 15 (benefit sharing) and Article 21.1 (transnational practices), creates a transnational obligation (p. 18). The meeting discussed international social responsibility, social determinants of health, the combination of human rights and bioethics, the right to health, solidarity, etc. A few countries endorsed the draft; most criticized it, with diverse viewpoints.

¶13. Colombia, on behalf of the Latin American group that had pushed for the inclusion of Article 14 in the Bioethics Declaration, said the draft was contrary to the spirit of the Declaration and that the report should not be forwarded to the DG. Cuba supported Colombia, and complained that the draft was founded in "liberal capitalism." Joining the Colombian intervention were Philippines, Peru, and the Dominican Republic. The Chairman of the IBC said they would consider the draft further. He welcomed the joint action by the Latin American countries, but specifically disputed their contention that the draft report reflects an "ideology": this is "totally false." He asked who was behind their effort so he could communicate with them and consider their views for the next IBC meeting.

¶14. The U.S. intervened on several points, in particular, that the effort to squeeze the complex issues of improving health care into the language of rights generally, and that of the Bioethics Declaration specifically, is misplaced. The IBC should not attempt to interpret or apply the Declaration; as evident from the discussion, there are divergent views about its meaning. It should be recalled, moreover, that two conditions were essential to reaching a consensus on the Bioethics Declaration: a) Member States understood the Declaration had to be written on the basis of broad principles and that they could not reach agreement on particular applications. The IBC walks into quicksand if it tries to supply the specificity that the Member States themselves avoided in order to reach consensus. b) The wording (including Article 14, which was discussed at length by Member States) was precisely drafted and negotiated in order to reach this consensus; the understanding of the U.S., on the basis of which it joined consensus, was (and is) that Article 14 is descriptive, not normative. The IBC is exceeding its mandate in issuing what appear to be authoritative statements about the Declaration and in doing so to attempt to create new rights and obligations. Whatever is finally published should contain a disclaimer that it does not represent the views of UNESCO or of Member States (the disclaimer in the consent report mentioned only the former), and this should be more readily observable than the very small-type disclaimer in that report.

¶15. Comments on the draft report can be filed in writing. The IBC intends to agree on the final version at its next meeting.

¶16. Comment: IBC's activities in connection with the Bioethics Declaration demonstrate a number of problems that arise from normative activities at UNESCO. These relate to the IBC specifically, but also more generally to normative instruments.

An advisory committee composed of independent experts acting in their personal capacity is a vehicle ripe for free-lancing; the committee members have a draw on Member States' resources and the ability to use the imprimatur of the Organization to advance their own personal agenda and ideological predilections, with no control by Member States. They can do this by issuing reports and publications. These are published by the UNESCO press with the UNESCO logo. The standard disclaimer that the publication does not necessarily represent the views of the UNESCO is barely visible, except to those looking

closely for it. If it is noticed, its effectiveness in any event is undermined by the appearance and provenance of the publication. The committee is thus able to issue what appear to be official and authoritative statements. These can be used to support efforts to have UNESCO act in an area by preparing a normative instrument, or as fodder for efforts to influence the broader political and intellectual climate. For instance, the report on Social Responsibility that is in process declaims on the role of the State (e.g., the rationale for its sovereignty must be found in the need to protect people from untreated disease) and international solidarity, and finds an international obligation of social responsibility. It also opines that the profit motive of the pharmaceutical industry "no doubt conflicts" with the Bioethics Declaration. Statements like this can be expected to be picked up and used by governments and private sector organizations who seek to find a rights-based pressure point to achieve resource transfers (money or intellectual property) within countries and from the "rich" to the "poor" countries.

While advisory committees of experts, and the IBC in particular, are themselves problematic, they also demonstrate the broader risks that arise from the development of normative instruments at UNESCO. The danger arises first in the drafting of the instrument; the drafting process itself becomes a vehicle for trying to achieve policy goals that one would not think would be included in the subject matter of the instrument under consideration. Thus the drafting of what was billed as a bioethics declaration enabled various member states and academics working through the IBC and through member states to introduce a bevy of economic, social, and political matters: technology transfer, protection of all forms of life and the environment, the value and use of intellectual property and traditional knowledge, support for developing countries, etc. It is difficult enough in the negotiation to limit the instrument to the agreed upon subject matter. But the document that is the product of this negotiation and agreed to by Member States can then be used as a launching pad by academics, advisory committees, and member states to push the very notions that were opposed by some of the member States and discarded in the negotiation of the instrument in order to reach a consensus. Creative academics and members of an advisory committee, in addition, can use the words of the instrument as a foundation on which to hook various other agendas and to find (really to create) new "rights" not even thought of at the time. UNESCO is not, therefore, a reliable forum for international agreements. The United States should be vigilant to efforts to develop normative instruments at UNESCO. It should be prudent and cautious about joining any that are adopted. EndComment.

OLIVER